
HOUSE BILL No. 1208

DIGEST OF INTRODUCED BILL

Citations Affected: IC 11-10-4-6.5; IC 11-12-4-3.5; IC 12-7-2-3.5; IC 12-15; IC 12-21; IC 31-9-2-52; IC 31-32-6-4.

Synopsis: Health, mental health, and addiction matters. Allows a department of correction (DOC) offender to be prescribed or administered mental health drugs that are available to a Medicaid recipient under specified circumstances. Requires DOC to adopt standards for the use of mental health drugs for county jails that are the same as the standards used by DOC. Requires the division of mental health and addiction to create a forensic technical assistance center. Creates the mental health Medicaid quality advisory committee as a permanent committee to advise the drug utilization review board. (The Medicaid quality advisory committee is a temporary committee that expires July 1, 2009.) Provides for the closing of a juvenile proceeding for the testimony of health care providers and certain other providers. Creates a multiagency task force on workforce development issues relating to individuals with mental health and addictions issues. Makes a finding that the state needs one mental health facility to be funded by bonding by the finance authority. (The introduced version of this bill was prepared by the commission on mental health.)

Effective: July 1, 2009.

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January 12, 2009, read first time and referred to Committee on Public Health.

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Introduced

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1208

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 11-10-4-6.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2009]: **Sec. 6.5. (a) Subject to section 6 of this chapter, the**
4 **department shall allow a physician licensed under IC 25-22.5 to**
5 **prescribe or administer to an offender a drug:**

6 **(1) that is available to an individual who is eligible for**
7 **Medicaid under IC 12-15;**

8 **(2) that is administered to the offender to control a mental or**
9 **an emotional disorder; and**

10 **(3) that the offender:**

11 **(A) has been prescribed by a physician licensed under**
12 **IC 25-22.5; and**

13 **(B) has taken before the offender's incarceration in order**
14 **to stabilize a mental or an emotional disorder.**

15 **(b) The department may not require a physician to obtain prior**
16 **authorization before prescribing or administering a drug under**
17 **subsection (a).**



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SECTION 2. IC 11-12-4-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 3.5. (a) The department shall adopt rules under IC 4-22-2 for county jails to govern the use of drugs for controlling a mental or an emotional disorder prescribed for a confined person.**

(b) The provisions governing the prescription of drugs for controlling a mental or an emotional disorder by the department under IC 11-10-4-6 and IC 11-10-4-6.5 shall be applied to the use of prescription drugs for controlling a mental or an emotional disorder for a confined person in a county jail.

SECTION 3. IC 12-7-2-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 3.5. "Advisory committee", for purposes of IC 12-15-35-51, has the meaning set forth in IC 12-15-35-51(a).**

SECTION 4. IC 12-15-35-51 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 51. (a) As used in this section, "advisory committee" refers to the mental health Medicaid quality advisory committee established by subsection (b).**

(b) The mental health Medicaid quality advisory committee is established. The advisory committee consists of the following members:

- (1) The director of the office or the director's designee, who shall serve as chairperson of the advisory committee.**
- (2) The director of the division of mental health and addiction or the director's designee.**
- (3) A representative of a statewide mental health advocacy organization.**
- (4) A representative of a statewide mental health provider organization.**
- (5) A representative from a managed care organization that participates in the state's Medicaid program.**
- (6) A member with expertise in psychiatric research representing an academic institution.**
- (7) A pharmacist licensed under IC 25-26.**

The governor shall make the appointments for a term of four (4) years under subdivisions (3) through (7) and fill any vacancy on the advisory committee.

(c) The office shall staff the advisory committee. The expenses of the advisory committee shall be paid by the office.

(d) Each member of the advisory committee who is not a state

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1 employee is entitled to the minimum salary per diem provided by
 2 IC 4-10-11-2.1(b). The member is also entitled to reimbursement
 3 for traveling expenses as provided under IC 4-13-1-4 and other
 4 expenses actually incurred in connection with the member's duties
 5 as provided in the state policies and procedures established by the
 6 Indiana department of administration and approved by the budget
 7 agency.

8 (e) Each member of the advisory committee who is a state
 9 employee is entitled to reimbursement for traveling expenses as
 10 provided under IC 4-13-1-4 and other expenses actually incurred
 11 in connection with the member's duties as provided in the state
 12 policies and procedures established by the Indiana department of
 13 administration and approved by the budget agency.

14 (f) The affirmative votes of a majority of the voting members
 15 appointed to the advisory committee are required by the advisory
 16 committee to take action on any measure.

17 (g) The advisory committee shall advise the office and make
 18 recommendations concerning the implementation of
 19 IC 12-15-35.5-7(c) and consider the following:

- 20 (1) Peer reviewed medical literature.
- 21 (2) Observational studies.
- 22 (3) Health economic studies.
- 23 (4) Input from physicians and patients.
- 24 (5) Any other information determined by the advisory
- 25 committee to be appropriate.

26 (h) The office shall report recommendations made by the
 27 advisory committee to the drug utilization review board
 28 established by section 19 of this chapter.

29 (i) The office shall report the following information to the select
 30 joint commission on Medicaid oversight established by IC 2-5-26-3:

- 31 (1) The advisory committee's advice and recommendations
- 32 made under this section.
- 33 (2) The number of restrictions implemented under
- 34 IC 12-15-35.5-7(c) and the outcome of each restriction.
- 35 (3) The transition of individuals who are aged, blind, or
- 36 disabled to the risk based managed care program. This
- 37 information shall also be reported to the health finance
- 38 commission established by IC 2-5-23-3.
- 39 (4) Any decision by the office to change the health care
- 40 delivery system in which Medicaid is provided to recipients.

41 (j) Notwithstanding subsection (b), the initial members
 42 appointed to the advisory committee under this section are

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1 **appointed for the following terms:**

2 **(1) Individuals appointed under subsection (b)(3) and (b)(4)**
 3 **are appointed for a term of four (4) years.**

4 **(2) An individual appointed under subsection (b)(5) is**
 5 **appointed for a term of three (3) years.**

6 **(3) An individual appointed under subsection (b)(6) is**
 7 **appointed for a term of two (2) years.**

8 **(4) An individual appointed under subsection (b)(7) is**
 9 **appointed for a term of one (1) year.**

10 **This subsection expires December 31, 2013.**

11 SECTION 5. IC 12-15-35.5-7, AS AMENDED BY P.L.8-2007,
 12 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2009]: Sec. 7. (a) Subject to subsections (b) and (c), the office
 14 may place limits on quantities dispensed or the frequency of refills for
 15 any covered drug for the purpose of:

16 (1) preventing fraud, abuse, or waste;

17 (2) preventing overutilization, inappropriate utilization, or
 18 inappropriate prescription practices that are contrary to:

19 (A) clinical quality and patient safety; and

20 (B) accepted clinical practice for the diagnosis and treatment
 21 of mental illness; or

22 (3) implementing a disease management program.

23 (b) Before implementing a limit described in subsection (a), the
 24 office shall:

25 (1) consider quality of care and the best interests of Medicaid
 26 recipients;

27 (2) seek the advice of the drug utilization review board,
 28 established by IC 12-15-35-19, at a public meeting of the board;
 29 and

30 (3) publish a provider bulletin that complies with the
 31 requirements of IC 12-15-13-6.

32 (c) Subject to subsection (d), the board may establish and the office
 33 may implement a restriction on a drug described in section 3(b) of this
 34 chapter if:

35 (1) the board determines that data provided by the office indicates
 36 that a situation described in IC 12-15-35-28(a)(8)(A) through
 37 IC 12-15-35-28(a)(8)(K) requires an intervention to:

38 (A) prevent fraud, abuse, or waste;

39 (B) prevent overutilization, inappropriate utilization, or
 40 inappropriate prescription practices that are contrary to:

41 (i) clinical quality and patient safety; and

42 (ii) accepted clinical practice for the diagnosis and treatment

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1 of mental illness; or
 2 (C) implement a disease management program; and
 3 (2) the board approves and the office implements an educational
 4 intervention program for providers to address the situation.
 5 (d) A restriction established under subsection (c) for any drug
 6 described in section 3(b) of this chapter:

- 7 (1) must comply with the procedures described in
 8 IC 12-15-35-35;
 9 (2) may include requiring a recipient to be assigned to one (1)
 10 practitioner and one (1) pharmacy provider for purposes of
 11 receiving mental health medications;
 12 (3) may not lessen the quality of care; and
 13 (4) must be in the best interest of Medicaid recipients.

14 (e) Implementation of a restriction established under subsection (c)
 15 must provide for the dispensing of a temporary supply of the drug for
 16 a prescription not to exceed seven (7) business days, if additional time
 17 is required to review the request for override of the restriction. This
 18 subsection does not apply if the federal Food and Drug Administration
 19 has issued a boxed warning under 21 CFR 201.57(e) that applies to the
 20 drug and is applicable to the patient.

21 (f) Before implementing a restriction established under subsection
 22 (c), the office shall:

- 23 (1) seek the advice of the ~~mental health quality advisory~~
 24 ~~committee until June 30, 2009; mental health Medicaid quality~~
 25 **advisory committee established by IC 12-15-35-51;** and
 26 (2) publish a provider bulletin that complies with the
 27 requirements of IC 12-15-13-6.

28 (g) Subsections (c) through (f):

- 29 (1) apply only to drugs described in section 3(b) of this chapter;
 30 and
 31 (2) do not apply to a restriction on a drug described in section
 32 3(b) of this chapter that was approved by the board and
 33 implemented by the office before April 1, 2003.

34 SECTION 6. IC 12-21-4.1 IS ADDED TO THE INDIANA CODE
 35 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 2009]:

37 **Chapter 4.1. Workforce Development Task Force**

38 **Sec. 1. (a) As used in this section, "task force" means the**
 39 **workforce development task force for mental health and addiction.**

40 **(b) The workforce development task force for mental health and**
 41 **addiction is established.**

42 **(c) The task force consists of the following individuals to be**

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appointed by the governor:

(1) One (1) representative from the division of mental health and addiction (IC 12-21-1-1) who shall serve as chairperson of the task force.

(2) One (1) representative from the state department of health (IC 16-19-3-1).

(3) One (1) representative from the department of education (IC 20-19-3-1).

(4) One (1) representative from the department of correction (IC 11-8-2-1).

(5) One (1) representative from the Indiana professional licensing agency (IC 25-1-5-3).

(6) One (1) representative from the Indiana department of veterans' affairs (IC 10-17-1-2).

(7) One (1) representative from the commission on Hispanic/Latino affairs (IC 4-23-28-2).

(8) Two (2) representatives of different advocacy groups for consumers of mental health services.

(9) One (1) representative from a statewide coalition that represents minority health issues.

(10) One (1) member of the Indiana commission on mental health (IC 12-21-6.5-2).

(11) One (1) representative of community mental health centers.

(12) One (1) representative from a college or university from a program for an undergraduate degree in social work.

(13) One (1) representative from a college or university with a school of nursing.

(14) One (1) psychologist licensed under IC 25-33 and engaged in private practice.

(15) One (1) representative from the Indiana University School of Medicine, department of psychiatry.

(16) One (1) representative from the Indiana University School of Medicine, department of:

(A) pediatrics; or

(B) internal medicine.

(17) One (1) representative from Riley Hospital for Children specializing in:

(A) infant; or

(B) toddler;

mental health.

(18) One (1) representative from Ivy Tech Community

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College, human service degree program.

(19) Two (2) representatives of consumers.

(d) The division of mental health and addiction shall provide staff for the task force.

(e) The task force shall study the following issues concerning individuals with mental illness:

(1) Increases in wages and other compensation for difficult to recruit mental health and addiction professional classifications.

(2) Loan repayment programs to attract individuals in classifications that provide services in mental health and addiction programs.

(3) Tuition reimbursement, including license and certification fees, for individuals in classifications that provide services in mental health and addiction programs.

(4) Internship opportunities for individuals in classifications that provide services in mental health and addiction programs.

(5) Mentoring opportunities for individuals in classifications that provide services in mental health and addiction programs.

(6) Revision of curriculum in master's, doctorate, and medical level programs to require courses in mental health and addiction.

(7) Marketing programs offering sign-on bonuses and referral incentives for difficult to recruit mental health and addiction professional classifications.

(8) Medical rate setting, including comparison of the state's rate with similar states.

(f) The task force shall present findings and make recommendations to the Indiana commission on mental health not later than August 2011.

(g) This section expires December 31, 2011.

SECTION 7. IC 12-21-5-1.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1.5. The division shall do the following:

(1) Adopt rules under IC 4-22-2 to establish and maintain criteria to determine patient eligibility and priority for publicly supported mental health and addiction services. The rules must include criteria for patient eligibility and priority based on the following:

(A) A patient's income.

(B) A patient's level of daily functioning.

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- 1 (C) A patient's prognosis.
- 2 (2) Within the limits of appropriated funds, contract with a
- 3 network of managed care providers to provide a continuum of
- 4 care in an appropriate setting that is the least restrictive to
- 5 individuals who qualify for the services.
- 6 (3) Require the providers of services funded directly by the
- 7 division to be in good standing with an appropriate accrediting
- 8 body as required by rules adopted under IC 4-22-2 by the
- 9 division.
- 10 (4) Develop a provider profile that must be used to evaluate the
- 11 performance of a managed care provider and that may be used to
- 12 evaluate other providers of mental health services that access state
- 13 administered funds, including Medicaid, and other federal
- 14 funding. A provider's profile must include input from consumers,
- 15 citizens, and representatives of the mental health ombudsman
- 16 program (IC 12-27-9) regarding the provider's:
 - 17 (A) information provided to the patient on patient rights before
 - 18 treatment;
 - 19 (B) accessibility, acceptability, and continuity of services
 - 20 provided or requested; and
 - 21 (C) total cost of care per individual, using state administered
 - 22 funds.
- 23 (5) Ensure compliance with all other performance criteria set
- 24 forth in a provider contract. In addition to the requirements set
- 25 forth in IC 12-21-2-7, a provider contract must include the
- 26 following:
 - 27 (A) A requirement that the standards and criteria used in the
 - 28 evaluation of care plans be available and accessible to the
 - 29 patient.
 - 30 (B) A requirement that the provider involve the patient in the
 - 31 choice of and preparation of the treatment plan to the greatest
 - 32 extent feasible.
 - 33 (C) A provision encouraging the provider to intervene in a
 - 34 patient's situation as early as possible, balancing the patient's
 - 35 right to liberty with the need for treatment.
 - 36 (D) A requirement that the provider set up and implement an
 - 37 internal appeal process for the patient.
- 38 (6) Establish a toll free telephone number that operates during
- 39 normal business hours for individuals to make comments to the
- 40 division in a confidential manner regarding services or service
- 41 providers.
- 42 (7) Develop a confidential system to evaluate complaints and

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1 patient appeals received by the division of mental health and
 2 addiction and to take appropriate action regarding the results of
 3 an investigation. A managed care provider is entitled to request
 4 and to have a hearing before information derived from the
 5 investigation is incorporated into the provider's profile.
 6 Information contained within the provider profile is subject to
 7 inspection and copying under IC 5-14-3-3.

8 (8) Submit a biennial report to the governor and legislative
 9 council that includes an evaluation of the continuum of care. A
 10 report submitted under this subdivision to the legislative council
 11 must be in an electronic format under IC 5-14-6.

12 (9) Conduct an actuarial analysis every four (4) years beginning
 13 July 1, 2000.

14 (10) Annually determine sufficient rates to be paid for services
 15 contracted with managed care providers who are awarded a
 16 contract under IC 12-21-2-7.

17 (11) Take actions necessary to assure the quality of services
 18 required by the continuum of care under this chapter.

19 (12) Incorporate the results from the actuarial analysis in
 20 subdivision (9) to fulfill the responsibilities of this section.

21 **(13) Create a forensic technical assistance center to support**
 22 **the development of forensic mental health and addiction**
 23 **interventions to assist in diverting individuals from the**
 24 **criminal justice system into treatment.**

25 SECTION 8. IC 31-9-2-52 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE JULY 1, 2009] : Sec. 52. "Health care
 27 provider", for purposes of **IC 31-32-6-4**, IC 31-32-11-1, IC 31-33,
 28 IC 31-34-7-4, and IC 31-39-8-4, means any of the following:

- 29 (1) A licensed physician, intern, or resident.
- 30 (2) An osteopath.
- 31 (3) A chiropractor.
- 32 (4) A dentist.
- 33 (5) A podiatrist.
- 34 (6) A registered nurse or other licensed nurse.
- 35 (7) A mental health professional.
- 36 (8) A paramedic or an emergency medical technician.
- 37 (9) A social worker, an x-ray technician, or a laboratory
 38 technician employed by a hospital.
- 39 (10) A pharmacist.
- 40 (11) A person working under the direction of any of the
 41 practitioners listed in subdivisions (1) through (10).

42 SECTION 9. IC 31-32-6-4 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) Upon motion of the prosecuting attorney, the child, or the child's guardian ad litem, counsel, parent, guardian, or custodian, the court may issue an order closing a proceeding during the testimony of a child witness or child victim if the court finds that:

- (1) an allegation or a defense involves matters of a sexual nature; and
- (2) closing the proceeding is necessary to protect the welfare of a child witness or child victim.

(b) Upon motion of the prosecuting attorney, the child, or the child's guardian ad litem, counsel, parent, guardian, or custodian, the court may issue an order closing a proceeding during the testimony of a health care provider if the court finds that:

- (1) the testimony involves matters that would be protected under 45 CFR Parts 160 and 164 (Health Insurance Portability and Accountability Act of 1996 (HIPAA)); or
- (2) the testimony involves matters that would be a privileged communication between a health care provider and the health care provider's patient.

(c) Upon motion of the prosecuting attorney, the child, or the child's guardian ad litem, counsel, parent, guardian, or custodian, the court may issue an order closing a proceeding during the testimony of:

- (1) a client and a:
 - (A) certified social worker;
 - (B) certified clinical social worker; or
 - (C) certified marriage and family therapist;
- (2) a school counselor and a student; or
- (3) a school psychologist and a student.

SECTION 10. [EFFECTIVE JULY 1, 2009] (a) The general assembly finds that the state needs the construction, equipping, renovation, refurbishing, or alteration of not more than one (1) mental health facility.

(b) The general assembly finds that the state will have a continuing need for the use and occupancy of the mental health facility described in subsection (a). The Indiana finance authority established by IC 4-4-11-4 may provide the mental health facility described in subsection (a) under IC 4-13.5.

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